49. IF SANTA FE HAD A JOINT MESSENGER REMOVED FROM ITS SERVICE, THIS WOULD NOT AFFECT HIS EXPRESS COMPANY SENIORITY IN JOINT SERVICE ON OTHER LINES IN THAT EXPRESS COMPANY DISTRICT.

Los Angeles.

Macmillan 821, 823	Holmquist 897	Lingenfelter 1128

Phoenix.

Pihl 15	Malouf 100

Kansas City.

Jones 704	Cole 1105

50. IF I TAKE A JOINT SERVICE POSITION OUTSIDE OF MY EXPRESS COMPANY SENIORITY DISTRICT, I DO NOT TAKE MY EXPRESS COMPANY SENIORITY WITH ME.

Los Angeles.

Dowding 43-44 Davis 347 George 767

San Francisco.

Ross 200

Phoenix.

Clemens 34

Kansas City.

Walsh 279

51. AS PROVIDED IN THE CLERK'S AGREEMENT, THE EXPRESS COMPANY BULLETINS VACANCIES IN JOINT SERVICE AND ASSIGNS THE JOB TO THE OLDEST QUALIFIED BIDDER. THE BULLETIN SPECIFIES THE PARTICULAR RAILROAD, THE RUN, AND WHETHER IT IS IN JOINT SERVICE. COPY OF THAT BULLETIN IS SENT TO SANTA FE GENERAL BAGGAGE AGENT. TEN DAYS AFTER THE DATE FOR FILING BIDS, THE EXPRESS COMPANY POSTS A NOTICE ON THE BULLETIN BOARD SHOWING WHO IS THE SUCCESSFUL BIDDER, FOLLOWING WHICH HE REPORTS TO THE SANTA FE BAGGAGE CAR OF THAT RUN AND THEREUPON ENTERS JOINT SERVICE ON THE SANTA FE. IF HE IS A NEW MAN, THE MESSENGER IN CHARGE OF THE RUN GIVES HIM HIS FIRST INSTRUCTIONS ON THE HANDLING OF BAGGAGE, MAIL, AND EXPRESS.

Los Angeles.

Dowding 23
Clarkson 102
Scott 148, 160
Moody 193, 202
Beckley 277
Davis 322, 330
Rafoth 368
Matthews 385, 393
Donn 442
Donalson 483
Strawn 511
Feil 529, 538
Pearson 559
Smith 571
Berryman 592
Dierking 616
Taggart 650
Feeney 667
Fuller 695, 705
McNeal 734
George 758
Macmillan 790, 802
Colvin 838
Timpone 871
Holmquist 894
Wixom 912, 921
Thies 948
Rosenthal 977
Squires 990
Ellis 1054
Bay 1064, 1072
Williamson 1094
Lingenfelter 1105, 1112
Lee 1140
Kingman 1184
Moore 1198, 1207
Lozar 1238

San Francisco.

Sopher 17
Hartell 65
Dufalt 78, 84
Slosson 98, 106
Mulholland 125
Hanson 140
Linnell 155
Sallade 167
Southwick 182
Ross 199
Tindall 228
Wolf 248
Davis 257

Phoenix.

Pihl 12
Clemens 38
Schimfessel 69
Malouf 88
Sipes 118

Kansas City.

Downing 8
North 64
Holloway 110
Mallory 153
Rosiere 187
Myers 215
Walsh 269, 282
Neville 313
Spencer 340
Reaves 362
Kurin 385
Callahan 404
Cecil 429
Grimes 453
Powell 466
Brewer 481
Reisinger 487
Sittel 542
Catron 581
Graham 619
Woodburn 638
Merry 676
Holon 687
Jones 697
Seltenreich 730
Baker 769
Cummings 786
Stephens 798, 807
Stewart 824
Powell 847
Dodge 879
Jones 920
Sjoholm 941
Powell 963
Zook 971
White 982
Grove 1052
Cole 1098
Maddox 1261
Graham 1305
Babcock 1324
Eflin 1360
Wilson 1368

52. ANY SANTA FE JOINT SERVICE JOB IS BULLETINED BY THE EXPRESS COMPANY AS ONE FOR THE HANDLING OF BAGGAGE, UNITED STATES MAIL, SANTA FE COMPANY MAIL, AND COMPANY MATERIAL.

Los Angeles.

Dowding 74
Clarkson 102, 114
Beckley 276, 307
Davis 331
Rafoth 353
Donalson 474, 483
Feil 538
Pearson 566
Berryman 601
George 759
Colvin 838, 853
Holmquist 886
Thies 941
Lingenfelter 1104

San Francisco.

Sopher 7, 17
Dufalt 84

Phoenix.

Pihl 13

Kansas City.

Moss 246
Walsh 278
Spencer 348
Kurin 385
Sittel 550
Graham 613
Merry 676
Jones 714
Seltenreich 730
Cummings 786
Stephens 798
Powell 963
Zook 971
Seaton 1128
Smith 1136
Graham 1305
Babcock 1323
Wilson 1381

53. THE TERM "TRAIN BAGGAGEMAN" DOES NOT APPEAR ON THE BULLETIN POSTED BY THE EXPRESS COMPANY.

San Francisco.

Ross 216

54. BEFORE THE COLLECTIVE AGREEMENT BETWEEN THE EXPRESS COMPANY AND THE CLERK'S ORGANIZATION, JOINT SERVICE JOBS WERE NOT BULLETINED FOR BIDS NOR AWARDED ON THE BASIS OF SENIORITY RIGHTS. IN THOSE DAYS THE EXPRESS COMPANY'S CHIEF MESSENGER OR ITS SUPERINTENDENT APPOINTED THE MEN TO THE RUNS. GENERALLY THE JOBS WERE AWARDED ACCORDING TO SENIORITY BUT IT WAS NOT A MATTER OF RIGHT.

Los Angeles.

Colvin 837 — Macmillan 790, 813 — Rosenthal 968 — Smith 1008

Los Angeles, October 3.

Thomas 18, 26 — Sollars 81

San Francisco.

Dufalt 83

Kansas City.

Bradford 1204 — Morgan 1343

55. THERE IS A CONTRACT BETWEEN THE EXPRESS COMPANY AND SANTA FE WHICH PROVIDES FOR JOINT SERVICE, AND BECAUSE WE PERFORM SERVICE DESCRIBED IN THAT CONTRACT WE ARE ENTITLED TO SENIORITY RIGHTS ON THE SANTA FE.

Los Angeles.

Berryman 602
Dierking 624, 627
McNeal 745
Lozar 1246-1247

Los Angeles, October 3.

Thomas 38

San Francisco.

Hartell 64

Kansas City.

Rosiere 194
Kurin 388
Graham 625
Baker 783
Jones 923
Smith 1139
Bradford 1235

56. WE HAVE SENIORITY RIGHTS ON THE SANTA FE IN RESPECT TO THE JOINT WORK. THIS SENIORITY IS SEPARATE AND APART FROM OUR EXPRESS COMPANY SENIORITY. IT IS REALLY THE RIGHT TO WORK FOR THE SANTA FE AS A TRAIN BAGGAGEMAN AND TO BE FREE FROM HAVING THAT JOB TAKEN AWAY OR INTERFERRED WITH BY ANY ONE ELSE. OUR RIGHT TO THE WORK ORIGINATES IN OUR HAVING PERFORMED IT SATISFACTORILY FOR MANY YEARS AS A SANTA FE EMPLOYEE. (WHERE WITNESS DID NOT CLAIM TO HAVE SENIORITY RIGHTS ON THE SANTA FE, THIS IS INDICATED BY THE WORD "NO" AFTER HIS NAME.)

Los Angeles.

Dowding 22
Clarkson 123
Scott 158-159
Moody 234
Davis 330-332
Matthews 393, No.
Donn 454, No.
Strawn 511-512, No.
Pearson 560, No.
Berryman 601-603
Dierking 623
Feeney 675
McNeal 735
Peterson 776, No.
Macmillan 803, No.
Colvin 840
Timpone 872
Holmquist 895, No.
Wixom 920
Thies 948, No.
Rosenthal 976
Ellis 1053, No.
Lingenfelter 1113
Lee 1141, No.
Lamb 1163, No.
Kingman 1184
Moore 1208-1209
Lozar 1240, No.

San Francisco.

Sopher 18-20, No.
Hartell 64-65
Dufalt 85
Slosson 105
Mulholland 125, No.
Sallade 169, No.
Tindall 229, No.

Phoenix.

Clemens 38-40, No.
Schimfessel 76, No.
Malouf 87, 99
Sipes 117, 120, 122, 123

Kansas City.

Downing 39
North 74-75
Holloway 114, 115
Mallory 153
Rosiere 194
Moss 251-256
Walsh 272, 281
Neville 318
Spencer 348
Kurin 384
Callahan 405
Cecil 434
Powell 466
Brewer 477
Reisinger 512
Sartwell 526, No.
Sittel 545, No.
Catron 583
Hester 601, No.
Graham 621
Woodburn 639
Yarnell 646
Melson 651
Mitchell 660
Holon 687
Stewart 755
Baker 766-767
Cummings 788
Stewart 827
Troutwine 899, 906
Jones 927
Sjoholm 947
White 988
Morris 998
Grove 1035
Randell 1091
Seaton 1131
Wait 1159
Bradford 1214
Maddox 1266
Beeney 1275
Kelly 1311
Burbett 1410

57. WE HAVE SUPERIOR RIGHTS TO HANDLE BAGGAGE AND TO PERFORM ALL THE SANTA FE WORK INCLUDED IN THE TERM "JOINT SERVICE." THOSE RIGHTS ARE RECOGNIZED IN THE COLLECTIVE AGREEMENT BETWEEN THE SANTA FE AND ITS BRAKEMEN. ARTICLE 23 OF THE AGREEMENT BETWEEN THE BROTHERHOOD OF RAILROAD TRAINMEN AND THE SANTA FE CONTAINS THAT PROVISION.

Kansas City.

Callahan 407 Wilson 1371, 1387

58. IN MY OCCUPATION AS A TRAIN BAGGAGEMAN ON THE SANTA FE, I CLAIM THAT I AM A SANTA FE EMPLOYEE BECAUSE I WORK ON THE SANTA FE TRAIN; I HANDLE SANTA FE BUSINESS; AND IN ALL THIS I AM INSTRUCTED BY THE SANTA FE'S GENERAL BAGGAGE AGENT. I MAKE REPORTS OF ALL MY WORK, EXCEPT THE HANDLING OF EXPRESS, TO THE SANTA FE. I RECEIVE PASSES FROM THE SANTA FE, UNDER THE SAME REGULATIONS AS ITS OTHER EMPLOYEES. THE BULLETIN WHICH ADVERTISES THE JOB STATES THAT IT IS FOR THE HANDLING OF BAGGAGE, MAIL, AND COMPANY MATERIAL ON A SANTA FE RUN. WHEN I AM ASSIGNED TO THE RUN AND THEN GO ON THE JOB, I BECOME A SANTA FE EMPLOYEE.

Los Angeles.

Dowding 69, 75
Clarkson 121
Scott 169, 183
Moody 211, 237
Morrison 259
Beckley 293, 309, 315
Davis 338
Rafoth 375
Matthews 398
Parrey 427
Donn 439, 459
Donalson 491, 492
Strawn 519
Feil 544, 545
Pearson 566
Smith 584
Berryman 603, 609
Dierking 623, 628
Taggart 660-661
Feeney 688
Fuller 712
McNeal 739
George 763
Macmillan 810
Colvin 846
Timpone 879
Holmquist 901-902
Wixom 929
Thies 955
Rosenthal 984
Squires 1002
Smith 1034
Ellis 1060, No.
Bay 1080
Williamson 1099
Lingenfelter 1120, 1126
Lee 1147
Lamb 1160, 1167
Kingman 1191
Moore 1209, 1217
Lozar 1245

Los Angeles, October 3.

Thomas 30

San Francisco.

Sopher 27
Hartell 69
Dufalt 90, 91
Slosson 109
Mulholland 128
Hanson 145
Linnell 154, 159
Sallade 169
Ross 218
Tindall 239
Wolf 251
Davis 263

Phoenix.

Pihl 19
Clemens 51, 54
Schimfessel 67, 74
Malouf 101
Sipes 120, 121, 133

Kansas City.

Downing 23
North 75, 83
Bushnell 131
Mallory 160
Rosiere 197
Myers 231
Moss 255
Walsh 275, 287
Neville 323, 327
Reaves 365
Kurin 386
Callahan 410
Cecil 437, 439
Powell 468
Brewer 476
Reisinger 512
Sartwell 526
Sittel 545
Dugger 561
Catron 585
Hester 601
Graham 624
Yarnell 645
Jesmore 671
Merry 679
Holon 689
Jones 699, 723
Seltenreich 736
Stewart 755
Baker 766
Cummings 793
Stephens 804
Stewart 827
Powell 845
Holzapfel 866
Dolge 881
Troutwine 902
Jones 922
Sjoholm 946
Powell 965
Zook 976
White 987
Morris 998
Gulner 1010
Robinson 1066
Rogers 1074
Randell 1091
Cole 1100, 1104
Scott 1112, 1113
Park 1123
Seaton 1131
Smith 1139-1140
Cunningham 1168
Bodine 1178
Bradford 1219
Maddox 1265
Beeney 1275
Pfeiffer 1285
Graham 1294
Kelley 1311
Morgan 1344
Sewell 1352
Eflin 1361
Wilson 1367, 1375
Davis 1435

59. SANTA FE OFFICIALS HAVE TOLD US THAT WE WERE SANTA FE EMPLOYEES.

Los Angeles.

Rafoth 377

Kansas City.

North 86-87
Walsh 287
Graham 617

Baker 773
Cole 1104

Bradford 1215
Davis 1433, 1435

60. WE ARE JOINT EMPLOYEES OF BOTH COMPANIES—THE RAILWAY EXPRESS COMPANY AND THE SANTA FE. SANTA FE DID NOT HIRE US DIRECTLY BUT IT EMPLOYED US INDIRECTLY TO WORK FOR IT AS TRAIN BAGGAGEMEN. SANTA FE AT ALL TIMES KNEW WE WERE DOING THE WORK AND PERMITTED US TO CONTINUE DOING IT.

Los Angeles.

Dowding 32, 73-74
Davis 349, 350
Matthews 398
Taggart 660-662
Fuller 712
McNeal 739
George 764
Holmquist 901-902
Bay 1062
Lozar 1246

Los Angeles, October 3.

Thomas 42

San Francisco.

Sopher 27
Dufalt 91
Slosson 109
Hanson 145
Southwick 184
Ross 209, 217-218
Wolf 251

Phoenix.

Clemens 23
Malouf 96, 102
Sipes 122, 124, 134

Kansas City.

North 64, 83, 100
Mallory 161
Rosiere 186
Walsh 283
Neville 326
Kurin 386
Callahan 405
Cecil 437
Grimes 455
Powell 468
Brewer 476
Sittel 545
Dugger 563
Catron 585
Hester 601
Graham 625
Yarnell 644
Melson 651
Mitchell 660
Jesmore 672
Merry 679
Jones 712, 723, 725
Baker 766, 776
Cummings 793

Stephens 802
Powell 844, 853
Holzapfel 865
Dodge 875
Troutwine 902
Sjoholm 946
Powell 964
Grove 1033, 1035
Robinson 1066
Eppler 1152
Wait 1159
Bradford 1213
Pfeiffer 1285
Graham 1295
Williams 1357
Wilson 1374
Burbett 1409
Davis 1426, 1435
Dorman 1446
Kelley 1455

61. WHILE RUNNING IN JOINT SERVICE ON ANY RAILROAD, WE ARE EMPLOYEES OF THAT RAILROAD SO LONG AS WE HANDLE THEIR BUSINESS AND SERVE THEM. TAKING THIS WORK AWAY FROM US AND GIVING IT TO SOMEBODY ELSE IS INTERFERING WITH OUR WORK AND DISCRIMINATING AGAINST US.

Los Angeles.

Dierking 629

Los Angeles, October 3.

Thomas 28

San Francisco.

Linnell 159 Sallade 170, 172 Davis 263

Kansas City.

Downing 23, 26
Mallory 160
Osborn 179
Rosiere 197, 209
Myers 232
Moss 246, 251, 258
Walsh 286
Grimes 454-456
Reisinger 512
Graham 626
Jones 723
Wilson 1368

62. IF THE SANTA FE GIVES THE BRAKEMEN THE RIGHT TO DO THE WORK WHICH WE HAVE BEEN PERFORMING IN JOINT SERVICE FOR THE SANTA FE, WE WOULD LOSE THE DIFFERENTIAL PAY AND SOME OF US MIGHT GET BUMPED OFF OUR JOBS ENTIRELY IF WE DID NOT HAVE ENOUGH SENIORITY TO PROTECT US. IN ADDITION TO THIS, OUR ANNUAL PASS RIGHTS WOULD BE LOST AND OUR PENSION RIGHTS WOULD BE ADVERSELY AFFECTED.

Los Angeles.

Dowding, 87, 93
Clarkson 129, 133
Scott 170, 176
Moody 212, 223
Morrison 260
Beckley 295
Davis 338
Matthews 399, 401
Parrey 428
Donn 460, 492
Strawn 520
Smith 584, 587
Feeney 684, 685
Fuller 714, 717
McNeal 742
George 764, 765
Peterson 783-784
Colvin 849, 856
Timpone 880
Holmquist 906
Wixom 933
Thies 957
Rosenthal 985
Squires 1003
Smith 1035
Bay 1082, 1083
Williamson 1099, 1100
Lingenfelter 1124
Lee 1150
Lamb 1169-1170
Kingman 1192
Lozar 1247

San Francisco.

Soper 32, 33, 43
Hartell 72
Dufalt 93-94
Slosson 110, 113
Mulholland 130
Sallade 175
Southwick 186
Tindall 239

Phoenix.

Clemens 46

Kansas City.

Downing 24, 30, 40
North 84
Holloway 114, 116
Bushnell 133
Mallory 148, 162
Osborn 180
Rosiere 198, 206
Myers 233, 235
Moss 256
Walsh 283
Neville 325
Spencer 356
Reaves 365
Kurin 384
Callahan 413
Cecil 437, 446
Grimes 458
Powell 469
Brewer 483
Reisinger 502, 510
Sittel 545
Dugger 562
Catron 589
Graham 628
Woodburn 641
Melson 655
Mitchell 664
Holon 691
Seltenreich 748
Stewart 758-759
Cummings 796
Stephens 809, 813
Stewart 828
Holzapfel 871
Dodge 883
Jones 924
Sjoholm 948
Powell 968-969
White 989, 990
Grove 1042
Randell 1092
Cole 1100
Seaton 1132
Wait 1159
Bradford 1218
Maddox 1267
Beeney 1274
Abney 1289
Graham 1296
Kelley 1314
Wilson 1382
Barker 1402
Burbett 1410
Davis 1426
Huff 1441
Dorman 1447
Adams 1460

63. BECAUSE WE HAVE A PRIOR RIGHT TO THE JOB OF HANDLING THE SANTA FE PART OF WHAT IS CALLED "JOINT SERVICE" ON THE SANTA FE, WE WOULD HAVE A CLAIM AGAINST ANYBODY WHO TOOK THE JOB AWAY FROM US, WHETHER IT WAS THE BROTHERHOOD OF RAILROAD TRAINMEN OR SANTA FE. OUR CLAIM WOULD BE BASED ON THE LOSS OF EARNINGS AND THE LOSS OF ALL THE FORMER RIGHTS AND PRIVILEGES WHICH BELONGED TO US AS JOINT SERVICE EMPLOYEES AND ON THE FACT THAT WE HAVE BEEN DISCRIMINATED AGAINST AND OUR RIGHT TO WORK HAS BEEN VIOLATED.

Los Angeles.

Holmquist 908

San Francisco.

Hanson 145

Kansas City.

Downing 39
North 83
Bushnell 131
Mallory 161
Osborn 180
Rosiere 198
Myers 223
Moss 254
Walsh 283
Neville 324
Spencer 348
Reaves 364
Kurin 387
Callahan 410
Cecil 437
Grimes 460
Sartwell 532
Sittel 544
Dugger 563
Graham 628
Melson 655
Stewart 759
Stephens 815
Stewart 829
Sjoholm 954
Morris 1000
Rogers 1076
Randell 1092
Park 1126
Seaton 1132
Smith 1148
Eppler 1150
Cunningham 1171
Bodine 1179
Bussell 1183
Bradford 1219, 1254
Graham 1297
Wilson 1386
Barker 1402
Davis 1427
Reynolds 1437
Huff 1441
Kelley 1455
English 1465

64. IF SANTA FE GIVES THE BRAKEMEN THE WORK WE HANDLED AS TRAIN BAGGAGEMEN WE SHOULD HAVE RECOURSE AGAINST THE SANTA FE. (WHERE THE WITNESS ANSWERED "NO", THAT IS INDICATED OPPOSITE HIS NAME.)

Los Angeles.

Clarkson 126
Moody 212
Beckley 310
Davis 338
Rafoth 375
Matthews 400
Donn 459, 465
Donalson 492
Strawn 520
Feil 545
Pearson 566
Berryman 609
Dierking 629
Feeney 682
McNeal 740, 741
Macmillan 811
Colvin 847
Timpone 880
Thies 956
Rosenthal 985
Squires 1002
Smith 1034
Bay 1081, No.
Williamson 1100
Lingenfelter 1120
Lee 1147, No.
Lamb 1172
Moore 1217
Lozar 1247

San Francisco.

Sopher 27
Hartell 70
Dufalt 90
Mulholland 129
Linnell 160
Tindall 240

Phoenix.

Pihl 20
Clemens 46
Schimfessel 75
Malouf 96
Sipes 133

Kansas City.

Downing 24
North 82-83
Holloway 113
Bushnell 133
Mallory 161
Osborn 180
Rosiere 198
Moss 255
Walsh 283
Neville 323
Callahan 410
Grimes 457
Powell 468
Brewer 480
Sartwell 527, 532
Catron 585
Graham 623
Stewart 828
Holzapfel 872
Dodge 883
Troutwine 903
Cole 1101
Eppler 1153
Bradford 1253-1254
Maddox 1267
Beeney 1275
Abney 1291
Sewell 1355
Burbett 1410
Reynolds 1439
Adams 1460

65. I WOULD HAVE A CLAIM AGAINST ANY RAILROAD IN THE DISTRICT WHERE I HAVE SENIORITY RIGHTS, IF THAT RAILROAD DISCONTINUED JOINT SERVICE AND GAVE MY WORK TO SOME ONE ELSE.

Kansas City.

Downing 42 Moss 258

66. WHILE I WAS IN MILITARY SERVICE, THE JOINT POSITIONS WERE ABOLISHED. I APPLIED TO THE EXPRESS COMPANY FOR REINSTATEMENT. I DID NOT APPLY TO SANTA FE. I THOUGHT THE CLERK'S ORGANIZATION WOULD TAKE CARE OF WHAT WAS NECESSARY, BUT THEY TOLD ME THE JOB WAS ABOLISHED.

Kansas City.

Mitchell 662-666 Jesmore 673 Bussell 1183-1185

67. ON THE EASTERN AND WESTERN LINES JOINT SERVICE NO LONGER EXISTS ON THE SANTA FE, BUT IT EXISTS ON ALL OTHER RAILROADS. IT WAS CUT OFF ABOUT SEPTEMBER 15, 1945, BUT I DON'T KNOW WHY. ALL OF THE WORK WHICH USED TO BE PERFORMED BY THE JOINT SERVICE MEN WAS RE-BULLETINED AS EXCLUSIVE BAGGAGE JOBS FOR THE B. OF R. T. BY SANTA FE AND EXCLUSIVE EXPRESS JOBS BY THE RAILWAY EXPRESS AGENCY. SEVERAL WEEKS BEFORE WE WERE OFFICIALLY NOTIFIED THAT JOINT SERVICE WAS BEING DISCONTINUED, WE HAD HEARD RUMORS THAT THE BRAKEMEN WERE CLAIMING OUR WORK. WE DID NOT KNOW FOR SURE UNTIL THE BRAKEMEN BEGAN MAKING STUDENT TRIPS. ANY NOTICE FROM THE SANTA FE OR EXPRESS COMPANY WAS GIVEN TWO OR THREE DAYS BEFORE ACTUAL DISCONTINUANCE OF JOINT SERVICE. SANTA FE GENERAL BAGGAGE AGENT INSTRUCTED US TO TURN IN OUR ANNUAL PASSES.

Kansas City.

Downing 22
North 101-103
Holloway 113
Bushnell 137
Mallory 167
Rosiere 197
Walsh 274, 303
Neville 323, 330
Kurin 394
Callahan 411, 424
Cecil 444
Brewer 483
Reisinger 488, 504
Sartwell 516, 531
Sittel 544
Hester 606
Graham 616
Melson 652
Mitchell 662
Holon 690
Jones 715
Seltenreich 749
Stewart 757
Baker 777
Stephens 813
Stewart 827
Powell 850
Dodge 882
Troutwine 903
Jones 935
Sjoholm 948, 955
Powell 968
White 989
Grove 1027, 1042
Randell 1092
Cole 1100
Seaton 1132
Wait 1159
Bradford 1252
Maddox 1266
Abney 1289
Babcock 1328
Morgan 1346, 1350
Sewell 1354
Williams 1358
Eflin 1363
Wilson 1378, 1382, 1388
Burbett 1408
Dorman 1447
English 1463

68. WHEN WE WERE TAKEN OFF THE JOINT SERVICE RUNS ON THE EASTERN AND WESTERN LINES, THE SAME DUTIES WHICH WE HAD BEEN PERFORMING WERE ASSIGNED TO THE BRAKEMEN. ON REQUEST FROM THE GENERAL BAGGAGE AGENT, WE INSTRUCTED THE BRAKEMEN HOW TO DO THIS WORK. THESE BRAKEMEN KNEW NOTHING ABOUT WORK OF A TRAIN BAGGAGEMAN. SOME OF THEM HAVE BEEN WORKING AS BRAKEMEN ONLY A FEW DAYS.

Kansas City.

Downing 35
Holloway 120, 123
Mallory 165
Rosiere 207
Moss 261
Walsh 301-302
Neville 329, 333
Cecil 443
Reisinger 504
Sartwell 531
Baker 779
Sjoholm 955
Gulner 1017
Grove 1060

69. AFTER THE BRAKEMEN TOOK OVER THE SANTA FE PART OF THE WORK WHICH WE DID IN JOINT SERVICE ON THE SANTA FE, I OBSERVED THAT THEY WERE INCOMPETENT TO DO THE WORK AS IT SHOULD BE DONE.

Los Angeles.

Dowding 49, 68

San Francisco.

Tindall 242

Kansas City.

Downing 35
Holloway 122-123
Mallory 173
Neville 329, 333
Reaves 370
Kurin 396
Sartwell 531
Troutwine 911
Gulner 1013-1016
Grove 1060
Wilson 1383, 1387-1390, 1394

70. MY SENIORITY AS A TRAIN BAGGAGEMAN ON THE EASTERN AND WESTERN LINES GIVES ME THE RIGHT TO WORK ON ANY RAILROAD WHICH RUNS WITHIN THE RAILWAY EXPRESS AGENCY DISTRICT WHERE I HOLD SUCH RIGHTS. I AM STILL PERMITTED TO WORK ON ANY RAILROAD IN THE DISTRICT WHERE I HOLD SENIORITY, EXCEPT THE SANTA FE, BUT ON SOME RAILROADS IN OUR SENIORITY DISTRICT THERE ARE FEWER RUNS THAN BEFORE, AND MY OPPORTUNITY TO WORK IN JOINT SERVICE ON THOSE ROADS IS REDUCED.

Kansas City.

Downing 4
Rosiere 199
Sartwell 533
Stephens 813
Stewart 829
Powell 839
Holzapfel 871
White 990
Gulner 1017
Smith 1142-1143
Eppler 1152
Bell 1191
Wilson 1383
English 1467

71. EXPLANATION OF HOW "BUMPING" WORKED AS A RESULT OF PUTTING THE ADJUSTMENT BOARD AWARDS INTO EFFECT, SEPTEMBER 15, 1945, ON THE EASTERN AND WESTERN LINES.

Kansas City.

Holloway 118	Stephens 813	Barker 1402
Osborn 183	Powell 839	Davis 1426
Reisinger 502	Sjoholm 951-952	Huff 1441
Seltenreich 747	Eppler 1152	Kelley 1458
Cummings 796		

72. ON THE EASTERN AND WESTERN LINES THE EXCLUSIVE MESSENGERS ARE NOW HANDLING AS EXPRESS MANY ITEMS WHICH THEY FORMERLY HANDLED FOR THE SANTA FE IN THEIR WORK AS JOINT SERVICE MESSENGERS. COMPANY MATERIAL WHICH USED TO BE HANDLED AS DEADHEAD BAGGAGE IS NOW DEADHEAD EXPRESS. THE INSTRUCTIONS IN THIS RESPECT COME FROM THE EXPRESS COMPANY—NOT FROM THE SANTA FE. AS EXCLUSIVE MESSENGERS, THEY STILL HANDLE SANTA FE'S PAYCHECKS AND THEIR MONEY UNDER DEADHEAD EXPRESS.

Kansas City.

Downing 53-54
North 66-67, 90-91
Mallory 145, 167
Rosiere 188, 207
Myers 218
Walsh 266, 300
Neville 329
Callahan 414
Graham 627
Wait 1162-1164

73. THE NATIONAL RAILROAD ADJUSTMENT BOARD NEVER SENT ME ANY NOTICE ABOUT THE DISPUTE WHICH RESULTED IN AN AWARD BY THE BOARD TO THE EFFECT THAT NOBODY COULD HANDLE BAGGAGE ON THE SANTA FE UNLESS HE WAS A PERSON HOLDING SENIORITY AS A BRAKEMAN ON THE SANTA FE. I HAD HEARD RUMORS FROM TIME TO TIME THAT THE BRAKEMEN WERE CLAIMING THAT WE HAD NO RIGHT TO HANDLE BAGGAGE ON THE SANTA FE, BUT THERE WAS NOTHING DEFINITE ABOUT IT. I NEVER GOT A NOTICE FROM THE BOARD OR ANY ONE ELSE TO ATTEND A HEARING ON SUCH A A CLAIM.

Los Angeles.

Dowding 67 Clarkson 137 Donalson 494

Kansas City.

Downing 40
North 99, 104
Osborn 180
Rosiere 197
Walsh 305
Neville 324, 335
Kurin 396
Callahan 412
Cecil 446
Brewer 484
Reisinger 514
Sartwell 516
Sittel 554
Hester 606
Graham 628
Holon 690
Stewart 828
Dodge 883
Jones 924
Randell 1092
Smith 1143, 1147
Davis 1425
English 1464

74. I KNOW THAT A SUIT HAS BEEN FILED IN KANSAS CITY BY ONE OF THE JOINT MESSENGERS NAMED TEMPLETON AGAINST THE SANTA FE AND THE B. OF R. T. I KNOW WHAT THE SUIT IS ABOUT AND I CLAIM THAT I BELONG TO THE CLASS REPRESENTED BY TEMPLETON AND I AGREE TO BE BOUND BY THE RESULT OF THE SUIT.

Los Angeles.

Dowding 31
Clarkson 50
Scott 168
Moody 210
Morrison 258
Beckley 293
Davis 337
Rafoth 374
Matthews 397
Parrey 426
Donn 459
Donalson 490
Strawn 519
Feil 544
Pearson 565
Smith 583
Berryman 609
Dierking 627-628
Taggart 659
Feeney 681
Fuller 711
McNeal 738
George 763
Peterson 780
Macmillan 810
Colvin 845
Timpone 879
Holmquist 901
Wixom 928
Thies 954
Rosenthal 983
Squires 1001
Smith 1033
Ellis 1059
Bay 1079
Williamson 1098
Lingenfelter 1119
Lee 1146
Lamb 1166
Kingman 1190
Moore 1216
Lozar 1245

San Francisco.

Sopher 26
Hartell 68
Dufalt 89
Slosson 109
Mulholland 128
Hanson 144
Linnell 159
Sallade 168
Southwick 184
Ross 204
Tindall 238
Wolf 251
Davis 262

Phoenix.

Pihl 18
Clemens 45
Schimfessel 74
Malouf 95
Sipes 132

Kansas City.

Downing 22
North 81
Holloway 112
Bushnell 131
Mallory 160
Osborn 179
Rosiere 197
Myers 231
Moss 254
Walsh 283
Neville 323
Spencer 348
Reaves 364
Kurin 387
Callahan 409
Cecil 436
Grimes 457
Powell 468
Brewer 479
Reisinger 512
Sartwell 527
Sittel 547
Dugger 561
Catron 585
Hester 605
Graham 622
Woodburn 640
Yarnell 646
Melson 654
Mitchell 660
Jesmore 673
Merry 679
Holon 689
Jones 699
Seltenreich 737
Stewart 756
Baker 768
Cummings 792
Stephens 806
Stewart 827
Powell 845
Holzapfel 866
Dodge 883
Troutwine 904
Jones 924
Sjoholm 948
Powell 966
Zook 977
White 990
Morris 1000
Gulner 1012
Grove 1043
Robinson 1067
Rogers 1074
Randell 1092
Cole 1101
Scott 1113
Park 1124
Seaton 1133
Smith 1144
Eppler 1150, 1153
Wait 1160
Cunningham 1169
Bodine 1178
Bussell 1183
Bell 1192
Bradford 1218
Maddox 1267
Beeney 1275
Pfeiffer 1285
Abney 1290
Graham 1297
Kelly 1315
Babcock 1326
Allen 1338
Morgan 1344
Sewell 1353
Williams 1357
Eflin 1361
Wilson 1367, 1376
Barker 1402
Burbett 1410
Davis 1427
Reynolds 1437
Huff 1442
Dorman 1448
Kelley 1456
Adams 1460
English 1465

75. WAIVER OF SIGNATURE.

Every one of the 152 witnesses was asked if he was willing to waive signature and permit the deposition to be filed as if it had been signed by him, and he answered "Yes." Since this is undisputed, the citation of page references as to each witness would be of no advantage to any one.

FILED
OCT 23 19
CHARLES ELMORE C
O

Supreme Court of the United States

OCTOBER A. D., 1950, TERM.

No. 180.

BROTHERHOOD OF RAILROAD TRAINMEN, A VOLUNTARY UNINCORPORATED ASSOCIATION, PETITIONER,

VS.

HAROLD H. TEMPLETON, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A CORPORATION, AND PANHANDLE AND SANTA FE RAILWAY COMPANY, A CORPORATION, RESPONDENTS.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

R. Carter Tucker,
John Murphy,
J. Gordon Siddens,
All of 831 Scarritt Building,
Kansas City 6, Missouri,
Counsel for Petitioner.

Tucker, Murphy, Wilson & Siddens,
831 Scarritt Building,
Kansas City 6, Missouri,
Of Counsel.

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

May it please the Court:

The petitioner, Brotherhood of Railroad Trainmen, respectfully petitions this Honorable Court for a rehearing of the order of this Court entered on the 9th day of October, 1950, denying petitioner's petition for a writ of certiorari, and moves the Court to vacate said order and to grant said writ of certiorari as prayed in the petition

for the same. As grounds for this petition, petitioner shows to the Court the following:

I.

Petitioner's petition for writ of certiorari was filed and docketed in this Court on July 5, 1950, as No. 180 of the October Term, 1950. On August 25, 1950, there was filed and it is now pending in the United States District Court for the Western District of Missouri, Western Division (the same District Court from which this suit emanates), a suit entitled:

> "SCOTT A. HESTER, MARION R. HOLLON, CHAUNCEY, L. STEWART, AND DEWEY R. BREWER, Plaintiffs,
>
> VS.
>
> BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, E. R. BOGGS, Vice-President, Brotherhood of Railroad Trainmen, c/o DeSoto Hotel, St. Louis, Missouri, ORAL B. MULLEN, General Chairman, Brotherhood of Railroad Trainmen, 1009 Baltimore, Kansas City, Missouri, DON M. SCHMITT, State Legislative Representative, 309 East 10th Street, Kansas City, Missouri, RALPH E. DELANEY, Local Chairman, Brotherhood of Railroad Trainmen, Marceline, Missouri, GEM CITY LODGE, No, 272 an unincorporated subordinate lodge of Brotherhood of Railroad Trainmen, Marceline, Missouri, Defendants."

A true copy of the complaint in said suit is marked Exhibit A and is set out in the appendix attached to this petition.*

---

*A similar suit pending in the same court was voluntarily dismissed without prejudice on August 25, 1950. *John C. Kelly v. Brotherhood of Railroad Trainmen, No. 6137.*

The action is one for damages wherein a recovery is sought of the defendants named, and, in particular, of your petitioner, Brotherhood of Railroad Trainmen, as a voluntary unincorporated association and railway labor union in the sum of $2,800,000.00, plus $57,500.00 per month from November 15, 1949, or at the rate of $690,000.00 per year from said date for actual damages, plus $5,000,000.00 for punitive damages, or $7,800,000.00 in the aggregate, plus said sum of $57,500.00 per month from November 15, 1949.

The action purports to be a class action brought by the named plaintiffs on behalf of themselves and all other Express Messenger employees of the Railway Express Agency, Incorporated, whom the complaint alleges were, prior to September 15, 1945, engaged in joint-service on the Santa Fe System and in the handling of Santa Fe baggage on Santa Fe trains, it being further alleged that such joint-service was discontinued by the Santa Fe on said date of September 15, 1945, and the work of handling Santa Fe baggage on Santa Fe trains given to employees of the Santa Fe holding seniority as Brakemen, which craft of employees are represented by your petitioner. The complaint alleges that the plaintiff class consists of approximately two hundred and seventy-five employees.

The purported class which the plaintiffs in the Hester suit claim to represent is the same class which Templeton, in the case at bar, claims to represent.

In calling to the attention of this Court the intervening circumstances of the filing of the Hester suit, your petitioner does not concede, either by inference or otherwise, that the opinion and judgment of the Court of Appeals, in the case at bar, affirming the District Court's final decree of injunction, is in any degree whatever decisive or controlling of any of the matters which are sought to be presented by the complaint in the Hester case. On

the contrary, your petitioner emphatically contends that the opinion and judgment of the Court of Appeals has no controlling effect or bearing whatever on the subject matter of the Hester suit.

The intervening circumstance of such a suit which is directed at the entire membership of your Petitioner does in the opinion of petitioner serve to recreate and emphasize the public importance and very substantial nature of the question as to whether, at any stage of a continuing dispute between the collective agent and the Carrier, there is such a limitation or restriction on the collective bargaining power and authority conferred by the Railway Labor Act as will nullify the collective procedure itself and collective agreements reached in pursuance of that procedure. In other words, may the collective bargaining power conferred by the Railway Labor Act to make a new agreement settling for the future a dispute concerning the coverage or meaning of a pre-existing collective agreement or to change the terms of an existing agreement (*Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711, 739, 65 S. Ct. 1282) be abrogated or limited at any stage of the continuing dispute between the collective agent and the Carrier. In this case, your petitioner, as the collective bargaining representative of the employees of the Carrier holding seniority with the Carrier as Brakemen, claimed to the Carrier that such employees had the exclusive right, under their collective agreement (S. Fe's Exhibit 4 on file with this Court) to perform all of the Carrier's baggage work on its Eastern and Western Lines. The Carrier denied this claim, and the various disputes then arising perforce of this denial by the Carrier were processed to the National Railroad Adjustment Board and were by it, on April 20, 1942, decided in awards 6635 to 6639, inclusive, in favor of petitioner's claim. The Car-

rier, thereafter, not only refused to recognize the petitioner's claim, but refused to apply the awards. The dispute between the petitioner and the Carrier with respect to petitioner's claim continued to exist until the prospective and agreed settlement thereof was reached through the medium of the collective agreements, particularly the letter agreement of February 3, 1944 (B. of R. T.'s Exhibit 4), and paragraph 4(a) of the letter agreement of April 27, 1944 (B. of R. T.'s Exhibit 5), all made in pursuance of the collective bargaining power conferred by the Act, and made also within the purview of the earlier Whitney-Engel Memorandum (B. of R. T.'s Exhibit 1, R. 505, 506; see, also, pages 21, 22, 23 of petition for writ of certiorari), wherein it was agreed that the cases involving the aforementioned awards were *open questions* to be settled as such by conference and mutual agreement. As your petitioner points out in the jurisdictional statement and under questions presented (pp. 8, 10, petition for writ of certiorari), the issues thus presented under this question is not whether the awards of the National Railroad Adjustment Board are valid or invalid. It is the issue of whether, at any stage of the continuing dispute between the collective agent and the Carrier, there is any restriction or limitation upon the collective bargaining power and authority conferred by the Railway Labor Act, to settle, for the future, by collective agreement, rights between the parties to such agreements. Secs. 1a, 2 First, 2 Ninth, Railway Labor Act of 1934; 45 U. S. C., Sec. 151a, 152 First, 152 Ninth; *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, 544, 545, 57 S. Ct. 592; *Elgin, J. & E. Ry. Co.* v. *Burley,* 325 U. S. 711, 723-729, 739, 65 S. Ct. 1282; *Slocum* v. *Delaware L. & W. R. Co.,* (No. 391, April 10, 1950) 70 S. Ct. 577, 579.

In this case a restriction sufficient to completely abrogate and nullify the collective bargaining power and au-

thority has been imposed, and it has been imposed solely by reason of the Court of Appeals holding that awards 6635 to 6639, inclusive, are void. In its opinion, the Court of Appeals held (R. 639):

> "The many other arguments and contentions very ably presented for B. of R. T. have been considered, but it does not appear that the trial court was clearly in error as to any of its findings and we hold that on those findings the court rightly concluded that the awards made by the Board were void as to the plaintiff's class of workmen for want of notice to them; *that the agreements subsequently made were merely to apply and implement the awards and did not evidence new or modified collective bargaining agreements between the railroads and the B. of R. T.* and did not destroy or terminate the rights of the plaintiff class as they existed prior to the awards. The trial court was not in error in issuing its injunction which was properly narrowed in scope and limited in its effect as stated in the injunctional order as follows:
>
> > 'It is further ordered, adjudged and decreed that the effect of this injunction is to place the parties in the same legal position toward each other which they occupied on September 15, 1945, and as though Awards 6635 to 6639, inclusive, of the First Division of the National Railroad Adjustment Board had not been rendered, *and as though no agreements had been entered into between defendant carriers and the Brotherhood of Railroad Trainmen implementing said Awards and enforcing the same.*'
> >
> > 'It is further ordered adjudged, and decreed that defendants are not restrained and enjoined from pursuing any remedies they may have under the Railway Labor Act' " (Emphasis ours).

Holding that the awards are void for want of notice to the plaintiffs' class of workmen is one thing, but holding

that the agreements subsequently were made simply to apply and implement the awards and did not evidence "new or modified collective bargaining agreements" between the railroad and the B. of R. T. is an entirely different thing. The fact that the letter agreement of February 3, 1944 (B. of R. T.'s Exhibit 4, R. 511-513), and the agreement embodied in paragraph 4(a) of the letter agreement of April 27, 1944 (B. of R. T.'s Exhibit 5), were not entered into until after much conference and negotiation over a long period of time, pursuant to the Whitney-Engel Memorandum (B. of R. T.'s Exhibit 1, R. 505, 506) and in the spirit outlined by the Engel letter of November 19, 1943 (B. of R. T., Exhibit 8, R. 527-530), has never been disputed in this case. Thus, all of the requirements of the Railway Labor Act for the collective bargaining procedures of conference, negotiation and agreement were met. As a matter of law, the February 3, 1944, agreement (B. of R. T.'s Exhibit 4, R. 511-513) on its face was not necessary if the sole object of the conferences and negotiations that were had was to apply and implement awards 6635 to 6639, inclusive. The decision of the awards recognized an interpretation and application of the basic contract (S. Fe.'s Exhibit 4 on file with this Court), and particularly, Article XXIII thereof, that was claimed by the B. of R. T. To give effect to the awards so far as this disputed principle was concerned, all the Carrier had to do was to simply assign the baggage work on its Eastern and Western Lines to the Brakemen and nothing more. In view of the Adjustment Board's ruling, there was no necessity for any independent agreement that would amend and read out of the basic contract any disputed language. Nevertheless, that is precisely what the Carrier and the Brotherhood of Railroad Trainmen did by entering into the agreement of February 3, 1944. That agreement, by its terms, expressly reads out of the basic contract the controversial language of Article XXIII. It settles, for the

future, the dispute between the parties and leaves no doubt but that under the agreed-upon interpretation and application thus made, the Brakemen have the exclusive right to perform the baggage work. In the same category of agreement, and as an amendment of Article I of the basic contract, is paragraph 4 (a) of the April 27, 1944, agreement (B. of R. T.'s Exhibit 5, R. 514-521) which creates a new classification and a schedule rate of pay for such classification. Every element of a collective bargaining agreement is present in these two agreements. For the Court of Appeals to hold that these two agreements "did not evidence new or modified collective bargaining agreements between the railroads and the B. of R. T." is to either do violence to a fundamental purpose of the Act (as declared in Sec. 1(a) of the Act), or it is to affirm the existence of a restriction and a limitation upon the collective bargaining power and authority conferred by the Railway Labor Act. Your petitioner is unable to find any language in the Railway Labor Act itself which so restricts the power and authority thus conferred and which limits the exercise of that power and authority to disputes other than disputes which have been previously decided by an Adjustment Board award which has subsequently been declared void for the reasons assigned by the Court of Appeals in this case. Neither has your petitioner been able to find any authority, nor has any been cited to this Court in either of the briefs filed on behalf of the respondents in opposition to the petition for writ of certiorari wherein a court has passed upon the question as to whether or not such a restriction or limitation does exist and insofar as your petitioner is informed, this question has never been passed upon by this Court.

In the opinion of your petitioner the question is of great public importance and assumes substantial pro-

portions, not only because the jobs of one hundred and fifty Brakemen employees of the Carrier, who have held those jobs since September 15, 1945, are in jeopardy here, but because the question vitally affects all employees of the railroad world who, in their relations with the Carrier employers, are subject to collective bargaining agreements made on their behalf by their representatives. In fact, the existence of such a limitation, or even the threat of the existence of such a limitation, places in jeopardy one of the fundamental purposes of the Railway Labor Act, namely, settlement of disputes of this character by agreement (Sec. 1a, Railway Labor Act of 1934, 45 U. S. C., Sec. 151a).

Furthermore, if the subject matter of the February 3, 1944, agreement is the subject of collective bargaining, which it is, then, the agreement itself is a valid collective agreement by which the Brakemen are assured the exclusive right to perform the Carrier's baggage work on its Eastern and Western Lines. The validity or invalidity of the awards as to the Express Messengers at the time they were rendered in 1942 is no issue in the case and no claim of the Express Messengers predicated on such awards exists. Suits like the Hester suit are nothing more than harassment of the petitioner. Under the terms of the February 3, 1944, agreement, the Carrier, on September 15, 1945, assigned its baggage work to the Brakemen. If the Carrier should now claim to petitioner that the February 3, 1944, agreement properly interpreted and applied does not amend and modify the basic contract so as to clearly give to the Brakemen such exclusive right, then that would be a dispute between the Carrier and the petitioner which either the Carrier or the petitioner, or both, could take to the Adjustment Board. Such a dispute would not be a subject for judicial determination

by a federal court. Yet, in this case, the Court of Appeals has exercised jurisdiction to interpret and apply that agreement and has construed it as being only an implementation of the earlier awards and not a "new or modified collective agreement." This ruling not only contravenes the ruling laid down by this Court in *Slocum* v. *Del. L. & W. R. Co.*, (No. 391, April 10, 1950) 70 S. Ct. 577, *Order of Ry. Conductors of America* v. *So. Ry. Co.*, (No. 438, April 10, 1950) 70 S. Ct. 585, and *Order of Ry. Conductors of America* v. *Pitney*, 326 U. S. 561, 66 S. Ct. 322, but it circumvents the collective bargaining procedures of the Railway Labor Act.

The Whitney-Engel Memorandum of October 26, 1943 (B. of R. T.'s Exhibit 1, R. 501-506), and the Engel letter of November 17, 1943 (B. of R. T.'s Exhibit 8, R. 527-530), plainly show that there was no compulsion on the Carrier to confer and negotiate with petitioner for these agreements and to reach an agreed settlement of the continuing dispute as to the coverage of the basic contract. The very nature of the obligation assumed by the Carrier thereunder; that is, the contractual recognition of the exclusive right in the Brakemen, necessarily implied a discontinuance of joint-service on the Carrier's Eastern and Western Lines, if a full performance by the Carrier of its agreement was to be made. (Admittedly, the Carrier had no collective agreement with the Express Messengers or their representative, the Clerks Union). If, thereafter, the Carrier was reluctant, as it now professes, to assign the baggage work exclusively to the Brakemen on September 15, 1945, it cannot claim that when it made the assignment with the consequence of terminating joint-service, it did not will to do so. The Carrier's will was expressed in its contractual obligation to petitioner previously made.

II.

It has been said by the Carrier, in opposition to the petition for writ of certiorari herein, that among other issues this case does not involve any issue as to the jurisdiction of federal courts to abrogate collective agreements, but, rather, that the fundamental issue here is confined to whether any award which the Adjustment Board has made is valid unless the Board has given the statutory notice. To thus state the issue in this case is to completely ignore the first and the very fundamental question presented in the petition for writ of certiorari and which has been commented on above in this petition. The Court of Appeals did declare the letter agreements to be void, and that is something considerably different than declaring the awards to be void.

The Carrier further states that this case is controlled by the decisions in *Nord* v. *Griffin*, (7 C. C. A.) 86 F. 2d 481, and *Hunter* v. *A., T. & S. F. Ry. Co.*, (7 C. C. A.) 171 F. 2d 594. Both of those cases turn on the sole question as to whether the awards of the National Railroad Adjustment Board were void as to the plaintiffs by reason of the Board's failure to give the plaintiffs statutory notice. Neither of those cases involve nor decide the question as to whether collective bargaining agreements are void because they cover a subject matter that was previously involved in what has subsequently been declared to be a void award of the Board. The question as to whether there exists such restriction or limitation on the collective bargaining power was not decided in either the *Nord* or *Hunter* cases, and so far as appears from the opinion in either case was not present.

III.

In connection with question 5 of the questions presented in the petition for certiorari (p. 12, petition for writ of certiorari), which is the question of whether the jurisdictional amount has been proved in this cause, petitioner inadvertently failed to cite or call attention to the case of *Thompson* v. *Gaskill*, 315 U. S. 442, 62 S. Ct. 673. Petitioner believes the *Gaskill* case is controlling of this question and desires to direct attention thereto at this time.

CONCLUSION.

Wherefore, for the reasons herein stated and for all of the reasons set forth in the petition for writ of certiorari and supporting argument and brief, petitioner prays the Court to grant a rehearing hereon, to vacate the order of October 9, 1950, and to grant the petition for writ of certiorari.

Respectfully submitted,

R. CARTER TUCKER,
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Counsel for Petitioner.

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Kansas City 6, Missouri,
Of Counsel.

It is hereby certified that the above and foregoing petition for rehearing is presented in good faith and not

for delay. It is further certified that except for grounds II and III the grounds of the petition as stated in I are, in the opinion of counsel, of substantial and controlling effect and have been recreated and emphasized by the intervening circumstances of the filing of the Hester suit referred to in the petition.

R. CARTER TUCKER,
JOHN MURPHY,
J. GORDON SIDDENS,
Counsel for Petitioner.

APPENDIX.

Exhibit A.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

Civil Action No. 6555.

Scott A. Hester, Marion R. Hollon, Chauncey L. Stewart, and Dewey R. Brewer, Plaintiffs,

vs.

Brotherhood of Railroad Trainmen, a voluntary unincorporated association; E. B. Boggs, Vice-President, Brotherhood of Railroad Trainmen, % De Soto Hotel, St. Louis, Missouri; Oral B. Mullen, General Chairman, Brotherhood of Railroad Trainmen, 1009 Baltimore, Kansas City, Missouri; Don M. Schmitt, State Legislative Representative, Brotherhood of Railroad Trainmen, 309 East 10th Street, Kansas City, Missouri; Ralph E. Delaney, Local Chairman Brotherhood of Railroad Trainmen, Marceline, Missouri; Gem City Lodge, No. 272, An unincorporated subordinate lodge of Brotherhood of Railroad Trainmen, Marceline, Missouri, Defendants.

COMPLAINT.

1. Plaintiffs are citizens of the State of Kansas. Defendant, Brotherhood of Railroad Trainmen, is a voluntary unincorporated association and labor union, having its residence and principal place of business at Cleveland, Ohio. The defendants, E. B. Boggs, Oral D. Mullen, Don M.

Schmitt and Ralph E. Delaney are citizens of the State of Missouri. Defendant, Gem City Lodge, No. 272, is a voluntary unincorporated association and subordinate lodge of the Brotherhood of Railroad Trainmen having its residence and principal place of business at Marceline, Missouri.

2. The action arises under the Fifth Amendment to the Constitution of the United States, the Railway Labor Act enacted May 20, 1926, Chapter 347, 44 Stat. 577; as amended June 7, 1934, Chapter 426, 48 Stat. 926; June 21, 1934, Chapter 691, 48 Stat. 1185; June 25, 1936, Chapter 804, 49 Stat. 1921; and August 13, 1940, Chapter 664, Sections 2 and 3, 54 Stat. 785, 786; Title 45, U. S. C. A., 151 *et seq.*, as hereinafter more fully appears; The Labor Management Relations Act, 1947, Sub Chapter IV (c), Title 29, U. S. C. A. 141; Title 28, U. S. C. A. 1337; the Railroad Retirement Act of 1937; Title 28, U. S. C. A. 1337; The Railroad Retirement Act of 1935, August 29, 1935, Chapter 812, 49 Stat. 973; as amended June 24, 1937, Chapter 382, 50 Stat. 313; October 8, 1940, Chapter 757, 54 Stat. 1014; April 8, 1942, Chapter 227, 56 Stat. 208; July 31, 1946, Chapter 709, 60 Stat. 743; June 23, 1948, Chapter 608, 62 Stat. 577 and October 15, 1949, Chapter 695, 63 Stat. 880, Title 45, U. S. C. A. 215 *et seq.* The matter in controversy exceeds exclusive of interest and costs, the sum of three thousand dollars ($3,000.00).

3. Pursuant to Section 2, Third, of the Railway Labor Act of 1926, Title 45, U. S. C. A., 152, Third, the defendant Brotherhood of Railroad Trainmen is the statutory collective bargaining representative for all brakemen and train-baggagemen employed on the property of the Atchison, Topeka and Santa Fe Railway System, irrespective of whether or not such employees are members of said Brotherhood labor union. Said labor union has a nation wide membership numbering over 100,000 and it is impossible

and impractical for plaintiffs to join its many members as defendants herein, but the said Brotherhood is named defendant herein as well as class representative of its entire membership. Said Brotherhood operates through subordinate lodges, chairmen and other officers, agents and representatives and the following named defendants joined herein are the duly authorized officers and agents of the said defendant Brotherhood who are engaged in representing and acting for employee members of the said Brotherhood in the State of Missouri and elsewhere on the Santa Fe System. All such defendants are engaged in the regular business of the Brotherhood of Railroad Trainmen acting in its statutory capacity of collective bargaining representative for brakemen and baggagemen, on the Santa Fe System.

4. E. B. Boggs, Vice-President of the Brotherhood of Railroad Trainmen, together with Oral B. Mullen, General Chairman of the General Grievance Committee of said Brotherhood on the property of the Atchison, Topeka and Santa Fe Railway Company, Eastern and Western Lines, are the duly authorized representatives for said unincorporated labor organization, in connection with the dispute existing between plaintiffs and the class of train baggagemen they represent and brakemen members of the Brotherhood of Railroad Trainmen on the property of the Atchison, Topeka and Santa Fe Railway Company, Eastern and Western Lines, involving the brakemen's assertion of a right or claim of right to train-baggage work formerly done by plaintiffs and their class, and as the said Brotherhood's duly authorized officers and agents engaged in representing and acting for employee members of said labor union in Missouri and elsewhere, they are named as defendants representatives of said organization and its entire membership for purposes of this action.

5. Don M. Schmitt, Legislative Representative of said Brotherhood of Railroad Trainmen, is one of the highest ranking members of said national organization and labor union, serving it in an official capacity in the State of Missouri and as its duly authorized agent engaged in representing and acting for its employee members. Said unincorporated labor organization and its individual lodges are united under a common constitution and by-laws regulating all subordinate lodges, officials, and members and have a common treasury derived from membership dues and other sources, and the said Don M. Schmitt is a duly authorized representative for and an integral part of said unincorporated labor organization in connection with its avowed policy and practice of discrimination against the employment rights of plaintiffs and the class of trainbaggagemen they represent, and in behalf of brakeman, members of said labor union, to the end that plaintiffs and their class, through and due solely to said organization's discriminatory acts in clear violation of its statutory duty aforesaid, have been unjustly and illegally deprived of their employment and other property rights without due process of law, and therefore, the said Don M. Schmitt is named as defendant representative of said organization and its entire membership for the purpose of this action.

6. Ralph E. Delaney is a member of the Brotherhood of Railroad Trainmen and is Local Chairman of Gem City Lodge, No. 272, an unincorporated subordinate lodge of the said Brotherhood with residence and headquarters at Marceline, Missouri, and as the said Brotherhood's duly authorized agent engaged in representing and acting for its employee members he is named as defendant representative of the Brotherhood of Railroad Trainmen and of all of the subordinate lodges and of all members of the said Brotherhood.

7. Gem City Lodge, No. 272, an unincorporated subordinate lodge of the Brotherhood of Railroad Trainmen and its duly authorized representative acting for employee members and whose membership is drawn partly from brakemen employed on the property of the Atchison, Topeka and Santa Fe System is named as defendant representative of Brotherhood of Railroad Trainmen, the entire Brotherhood membership and all subordinate lodges of the said Brotherhood.

8. The Atchison, Topeka and Santa Fe Railway Company, a corporation, operates a railroad between Chicago, Illinois, and certain points on the Pacific Coast in California. The Panhandle and Santa Fe Railway Company, a corporation, operates the part of said railroad between Chicago and said California points that is located in Texas. Said railroad operation has been divided by said railroads into three lines. That part between Chicago, Illinois, and Newton, Kansas, or Wellington, Kansas, is called the Eastern Lines. That part between Newton, Kansas, or Wellington, Kansas, and Albuquerque, New Mexico, or Belen, New Mexico, is called the Western Lines. That part between Albuquerque, New Mexico, or Belen, New Mexico, and Los Angeles and other California points is called the Coast Lines. All of such railroad operations have connecting lines, handle through service, and are termed the Santa Fe system.

9. Plaintiffs bring this suit as a class action in behalf of themselves and all express messenger-train baggagemen similarly situated who have been and are being deprived of their such property rights and employment rights as train baggagemen by reason of the illegal, willful and malicious claims, conspiracies, contentions, threats and discriminatory acts of the Brotherhood of Railroad Trainmen, its officers, agents and representatives. The plain-

tiffs' class consists of approximately two hundred seventy five (275) members who are so numerous and are so widely scattered as to residence in various states of the union as to make it impractical to bring them before the Court. There are common questions of law and fact affecting the rights of the parties constituting the class and common relief is sought.

10. For many years, beginning sometime prior to April 1, 1892, the Railway Express Agency, Incorporated, or its predecessors, and the railroads comprising The Santa Fe System have jointly employed messenger-baggagemen. These messenger-baggagemen, including plaintiffs and the class they represent performed services both for the said Railway Express Agency, Incorporated, or its predecessors and for the said railroads. For said Railway Express Agency, Incorporated, said messenger-baggagemen, including plaintiffs handled express; for said railroads they handled baggage, United States mail, railroad company mail, and other items. All such services are performed in baggage cars owned and operated by the railroad. Express is the regular business of the Railway Express Agency, Incorporated. Baggage, United States mail and the handling of various other items in baggage cars are a part of the regular business of the railroads. The work of said messenger-baggagemen, including plaintiffs and the class they represent, is termed joint service. A train baggageman in joint service is not charged with any duties concerning the operation of the train and is under the direct and exclusive supervision and control of the railroad baggage department. Brakemen handling baggage continue to acquire seniority as brakemen only, there being no bargaining agreement securing seniority for train-baggagemen as such, and while they receive instructions from the Baggage Department they are under

the supervision and control of the Division Superintendents of the railroads.

11. Said messenger-baggagemen including plaintiffs were paid by said Railway Express Agency, Incorporated, acting as principal with respect to such express business, and by said Railway Express Agency, Incorporated, acting as agent for said railroads with respect to such baggage and mail business. Such compensation was physically delivered to said messenger-baggagemen, including plaintiffs, by said Railway Express Agency, Incorporated, and said Santa Fe railroads reimbursed said Railway Express Agency, Incorporated, for their respective parts of such compensation which usually amounted to not less than fifty per cent thereof. The Santa Fe also granted joint servicemen pass privileges in the manner provided for Santa Fe road employees.

12. In connection with such employment, said messenger-baggagemen, including plaintiffs, were and are entitled to the benefits provided for employees under the Railroad Retirement Act of 1937, U. S. C. A., Title 45, Section 228a to 228r, inclusive. While plaintiffs and their class were in joint service the said railroads paid to the Railway Express Agency, Incorporated, one-half of the railroad retirement tax paid by the Express Agency into the Railroad Retirement Fund for plaintiffs and their class. In connection therewith, the Santa Fe also reimbursed the Express Agency for fifty per cent (50%) of the messenger-baggagemen's vacation pay allowance.

13. While employed in joint service, plaintiffs and the class they here represent received differential pay for the handling of baggage and mail in addition to their base or bulletin pay. This differential pay averaged $15.00 or $20.00 per man per month.

14. With respect to such express business, said Railway Express Agency, Incorporated, retained the right to direct and control, all phases of the work of said messenger-baggagemen including plaintiffs.

15. With respect to such baggage and mail business the said railroads retained the right to direct and control and did direct and control all phases of the work of said messenger-baggagemen, including plaintiffs.

16. Plaintiffs were so employed by said Railway Express Agency, Incorporated, and The Atchison, Topeka and Santa Fe Railway Company and The Panhandle and Santa Fe Railway Company on said railroad carrier's Eastern and Western Lines, in joint service for many years continuously until September 15, 1945, when they were deprived of such employment under circumstances hereinafter stated and alleged.

17. At the discontinuation of joint service aforesaid on September 15, 1945, plaintiffs were employed as messenger-baggagemen on Santa Fe Trains. The reduction of messenger jobs caused by this change giving all train-baggage jobs to brakemen made it impossible for many former joint servicemen to hold a regular job, and they were compelled to work off the extra board, or accept any Express Agency employment their seniority could protect.

18. For years prior to the passage of the Railway Labor Act and at all times since, the Brotherhood of Railroad Trainmen, through its agents, representatives and members, has purported and professed itself to be the exclusive bargaining representative of the entire crafts of brakemen and train baggagemen, employed on the property of the Atchison, Topeka and Santa Fe Railway Company, a corporation, Eastern, Western and Coast Lines, the Panhandle and Santa Fe Railway Company, a corpora-

tion, and the entire Santa Fe System, being duly designated as such under and pursuant to Section 2, Third, of the Railway Labor Act (Title 45, Section 152, Third, U. S. C. A.). During all of that time the said Brotherhood has consistently and continuously failed and refused to bargain collectively for the craft of train baggagemen. For more than fifty (50) years the said Brotherhood has been hostile to joint servicemen and has persistently tried to drive them out of their train-baggageman employment and demanded that Santa Fe replace joint-service train-baggagemen with brakemen to increase employment of brakemen members of the said Brotherhood. Ever since the passage of the Railway Labor Act the said Brotherhood has perverted its position and has used the power available to it under said Act to cripple and destroy the train-baggagemen rights of such joint servicemen, including plaintiff and the class he represents, solely because they were not and are not brakemen and members of the Brotherhood of Railroad Trainmen.

19. In the year 1892 the defendant Brotherhood of Railroad Trainmen and the Atchison, Topeka and Santa Fe Railway Company first entered into a contract or collective bargaining agreement and at all times since there has been in effect such a contract or agreement denominated "Schedule of Rates, Rules and Regulations for Trainmen." All of the collective bargaining agreements negotiated by and between the Brotherhood of Railroad Trainmen and The Atchison, Topeka and Santa Fe Railway Company, a corporation, and the Panhandle and Santa Fe Railway Company, a corporation, respectively denominated "Schedule of Rates, Rules and Regulations for Trainmen" specifically provided the manner whereby baggage runs "not controlled by joint service" should be filled from the ranks of brakemen. All such agreements exclude their applica-

tion to baggagemen. A copy of such agreement effective December 27, 1943, is marked "Exhibit A," attached hereto and made a part hereof, the same as though set out in full in this place.

20. By contract and agreements with the Railway Express Agency, Incorporated, and its predecessors, said railroad carriers for over fifty years on their Eastern and Western Lines, and until September 15, 1945, filled their train baggageman rosters for runs controlled by joint service from the existing express messenger rosters. Joint service continues uninterrupted on the carriers Coast Lines. Under such agreements and by many years custom the railroads paid at least half of the joint service messenger-baggageman's salary and wages. Baggage runs not controlled by joint service on the Santa Fe Eastern and Western Lines were filled from the roster of eligible and competent brakemen in accordance with the provisions of the brakemen's bargaining agreement. Since September 15, 1945, all baggage runs on the said Eastern and Western Lines are filled from the roster of brakemen who, nevertheless continue to acquire seniority as brakemen only, and not as baggagemen, there being no bargaining agreement between the Santa Fe and the Brotherhood of Railroad Trainmen providing for baggageman seniority.

21. On or about the 28th day of February, 1935, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company*" and numbered docket number 324, entered its award number 143 whereby it decided that the work of handling baggage for Santa Fe Eastern and Western Lines upon certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen, and not to anyone else.

22. On or about the 20th day of April, 1942, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7684, entered its award number 6635 whereby it decided that the work of handling baggage for The Atchison, Topeka and Santa Fe Railway Company upon certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen, and not to said messenger-baggagemen, including plaintiffs.

23. On or about the 20th day of April, 1942, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Western Lines,*" and numbered docket number 10405, entered its award number 6636 whereby it decided that the work of handling baggage for the Santa Fe on any and all trains on the Eastern and Western Lines belongs to brakemen who are members of the Brotherhood of Railroad Trainmen and not to said messenger-baggagemen including plaintiff.

24. On or about the 20th day of April, 1942, The First Division of the National Railroad Adjustment Board in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7685, entered its award number 6637 whereby it decided that the work of handling baggage for the Santa Fe on certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen, and not to anyone else.

25. On or about the 20th day of April, 1942, The First Division of the National Railroad Adjustment Board in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7686, entered its award numbered 6638 whereby it decided that the work of handling baggage for the Santa Fe upon certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen and not to anyone else.

26. On or about the 20th day of April, 1942, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7685, entered its award number 6639 whereby it decided that the work of handling baggage upon certain Santa Fe trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen and not to anyone else.

27. Each of the said grievances and claims made by the Brotherhood of Railroad Trainmen, its officers and agents, are discriminatory, based on false premises, made without notice to plaintiffs or the class they represent and a scheme to promote the interests of brakemen using their bargaining representative power available under and provided for by the Railway Labor Act to deprive plaintiff and other such train-baggagemen of their employment rights and benefits. Such awards of the Adjustment Board based on said proceedings are illegal, void and unconstitutional, in this that messenger-baggagemen, including plaintiffs, were not notified or given any opportunity to be heard, although their employment rights

were directly involved and of which they were deprived by the awards, without due process of law in violation of the Railway Labor Act and the Fifth Amendment to the Constitution of the United States.

28. Enforcing and giving legal effect to said illegal and void awards, at the insistence and demands of the Brotherhood of Railroad Trainmen, its agents, members and officers, the Santa Fe agreed to and did on September 15, 1945, discharge said messenger-baggagemen, including plaintiffs, on its Eastern and Western Lines, terminating that part of their joint employment which was the handling of baggage, mail and other railroad business, whereby they were and are being unjustly deprived of their said property rights. Since September 15, 1945, the train baggage has been and is being handled by brakemen exclusively on the Santa Fe Eastern and Western Lines.

29. The discontinuance and termination of the employment of joint-servicemen in the employ of the Santa Fe was induced, procured and brought about by the Brotherhood of Railroad Trainmen, its officers, members and representatives by their filing before the Railroad Adjustment Board the claims in behalf of brakemen and against joint service train baggagemen to all train-baggage work, which resulted in the promulgation of the awards aforesaid, and agreements implementing them made with the Santa Fe at the insistence and demand of the Brotherhood of Railroad Trainmen that said awards be put into effect and complied with. The Santa Fe did not will to terminate the employment by it of messenger-baggagemen on its Eastern and Western Lines, independent of the awards of the National Railroad Adjustment Board, First Division, and the insistence and demand of the Brotherhood and its members that said awards be com-

plied with, and put into effect. The Santa Fe does not now will to discontinue or terminate messenger-baggagemen now in its employ upon the Coast Lines of its System, but the said Brotherhood is continuing to assert its claims for brakemen to all train baggage work, thereby discriminating against the train baggagemen now employed and disregarding its statutory duty as collective bargaining representatives for train baggagemen.

30. Plaintiffs state that their jobs and those of the members of their class and their right to remain employed by the railroads free from interference by others is their most precious property right and that the officers, chairmen, agents, and other representatives of the Brotherhood and its entire membership have conspired and plotted together to combine and use their collective economic power to accomplish their unlawful purpose of interfering with the inherent rights of plaintiffs and the class they here represent, to earn a livelihood as employees in the train service of such railroads. The Brotherhood of Railroad Trainmen through its said officers, agents and representatives acting in behalf of brakemen have continuously applied economic duress on the railroads comprising the Santa Fe System to coerce them into destroying and reducing the means of a livelihood of plaintiff and others similarly situated by discharge of all or most of them. Members of the class plaintiffs represent have devoted many years of faithful service to the interest of the Santa Fe and have developed special skills as train-baggagemen and have earned valuable retirement and other rights which they deem worthy of preservation.

31. The Brotherhood of Railroad Trainmen in absolute disregard of its statutory duty to protect the rights of all members of a craft or class which it should represent, or of public policy, has caused the plaintiffs and

others similarly situated tremendous loss, and as a result of past action, discrimination and misconduct of the Brotherhood of Railroad Trainmen, its members, representatives, officials and agents, train baggagemen in joint service have not been protected in their right to derive pay equal to that of brakemen performing the same train baggage work, or on seniority scheduled which the Brotherhood of Railroad Trainmen as bargaining representative for both brakemen and train or road baggagemen should have negotiated with the railroad carriers, and that as a result of the said Brotherhood's discriminatory failure and refusal so to act, train baggagemen in joint service have earned, on the average, $100.00 per month less than brakemen in exclusive baggage service doing the same work.

32. As a result of the discontinuance of joint service aforesaid and termination of the train baggageman employment of messenger-baggagemen, fifty-four (54) messenger-baggagemen in the Southwest Kansas Division of the Railway Express Agency, Incorporated, employees of the Santa Fe, and members of the class whom plaintiffs represent, lost their jobs, not only with the Santa Fe but also with the Express Agency. Other joint servicemen on other parts of the Santa Fe Eastern and Western Lines also lost their jobs entirely. Two hundred fifty (250) messenger-baggagemen were discontinued in joint service on the Santa Fe as a result of said awards, and the implementation thereof at the insistence of the Brotherhood. Such action resulted in a general reduction of the hours of employment and wages of plaintiffs and all such messenger-baggagemen formerly in joint service on the Santa Fe Eastern and Western Lines and the loss of other advantages previously enjoyed by said joint-servicemen by reason of their employment with the Santa Fe. The employment status of express messengers in both exclusive messenger service and joint messenger-baggage service on

other railroads was also disturbed. Due to the seniority rules some such road or train messenger-baggagemen were forced out of employment. As a result of brakemen taking over the train baggage work plaintiffs and all members of their class similarly situated have on the average been and are being deprived of $100.00 earnings and wages per month. Thereby their annuity potential under the Railroad Retirement Act of 1937, 45 U. S. C. A. Chapter 9, Section 228 a *et seq.* has been prejudiced.

33. In connection with implementing and settling the claims of the brakemen embodied in the aforesaid awards, the Santa Fe was required to pay and did pay and distribute to the brakemen the large penalties assessed by the respective awards for various numbers of years retroactive from April 30, 1944, the exact amounts of which are unknown to plaintiffs. Such penalties were based on the Brotherhood's discriminatory claims to the National Railroad Adjustment Board in behalf of brakemen that plaintiffs and other train baggagemen in joint service had displaced brakemen from baggage service, although until after September 15, 1945, when joint service was discontinued on the Eastern and Western Santa Fe Lines very few brakemen had ever worked in train baggage service on the Santa Fe and none had any seniority as train baggagemen.

34. The continuous misfeasance and interference with plaintiffs' job rights by the Brotherhood of Railroad Trainmen through its members, officers, chairmen and other representatives in behalf of the entire membership of their labor union and especially brakemen has been wilful and malicious for which they should be held liable for actual damages. Punitive damages should further be assessed against said defendants and the entire membership of said labor union because of the unlawful means

they used to carry out an unlawful object and purpose sufficiently large to have a deterring effect upon them. Considering the wealth of the Brotherhood of Railroad Trainmen and its subordinate lodges and the scope of their conspiracy and deliberate discrimination against plaintiffs and others similarly situated to damage and destroy their employment rights, it is believed that the sum of five million dollars should be assessed as punitive damages against the defendants.

35. By reasons of the aforesaid discriminatory acts of the Brotherhood of Railroad Trainmen through its officers and representatives and its interference with the employment rights, benefits and privileges of plaintiffs and the members of the class they represent the plaintiffs and their class have sustained actual damages in the amount of Two Million Eight Hundred Twenty Thousand Dollars ($2,820,000.00) to November 15, 1949, and thereafter said actual loss of wages and damages is continuing and increasing at the rate of in excess of Fifty Seven Thousand Five Hundred Dollars ($57,500.00) per month.

36. An actual controversy exists between plaintiffs and their class and defendants with respect to all of the aforesaid matters.

Wherefore, the premises considered, in behalf of all members of the class of joint messenger-baggagemen similarly deprived of their employment rights, privileges and benefits by the discriminatory acts of the Brotherhood of Railroad Trainmen, its officers, representatives and members, plaintiffs pray judgment against the defendants and the entire membership of the Brotherhood of Railroad Trainmen for actual damages in the amount of Two Million Eight Hundred Twenty Thousand Dollars ($2,820,000.00) to November 15, 1949, said actual loss of

wages and damages continuing to accrue from said date at the rate of Fifty Seven Thousand Five Hundred Dollars ($57,500.00) per month, and punitive damages in the amount of Five Million Dollars ($5,000,000.00) and for their costs herein incurred and expended.

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